



## COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE

INDIANA WESLEYAN — MARION  
GLOBE THEATER



### *Jeremy Simpson v. State of Indiana*

**Appeal from:**  
LaPorte Circuit Court,  
The Honorable  
Thomas J. Alevizos, Judge

**Oral Argument:**  
Tuesday, October 6, 2009  
11:00-12:00 p.m.  
20 minutes each side

#### CRIMINAL LAW

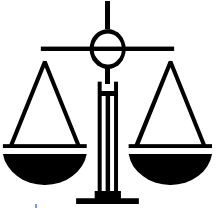
Today this court will hear arguments regarding whether the State rebutted Jeremy Simpson's claim that he acted in self-defense in shooting and killing Jeff Cooper; whether the trial court erred in failing to recall a State's witness; and whether the trial court erred in refusing one of Simpson's jury instructions regarding the presumption of innocence.

#### CASE SYNOPSIS

##### **Facts and Procedural History**

On August 3, 2006, a funeral was held for Carlon Bush's daughter, who drowned in a swimming accident. After the funeral, Bush went to the home of his daughter's mother with his brother, Thomas Ferrell. At approximately 7:00 that evening, Bush broke up an argument between the appellant, Jeremy Simpson, and another man. Simpson left the area. At approximately 1:00 a.m., Bush was

in front of the home with Ferrell, Jeff Cooper, and several others when Simpson arrived in a car with Walter Thompson and Derrick Samuels. The three men walked up to the home, and Cooper argued with Thompson. When another person tried to intervene, Cooper struck him in the face with a gun. Cooper then struck Thompson in the head with the gun, and Thompson fell to the ground. Cooper kicked and hit Thompson. Ferrell told Cooper to let Thompson go.

*Jeremy Simpson v. State of Indiana***CASE SYNOPSIS**

Cooper told Thompson, "I ought to kill you but I'm not." Thompson said, "Okay, whatever, don't hit me no more, don't hit me no more." Cooper replied, "I'm gonna tell you why you got what you got." Ferrell told Cooper, "If you're not gonna do nothin' to him, let him go." Ferrell heard footsteps and turned to see Simpson running toward him, firing a gun and saying, "Get off him." Ferrell was struck in the arm. Cooper was struck several times and later died. Bush fired shots at Thompson and Simpson, who fled.

The State charged Simpson with murder and criminal recklessness. Before trial, Simpson told fellow jail inmate Brian Gates that he shot Cooper because he was pistol-whipping Thompson. Simpson told Gates that he shot Cooper before Cooper had a chance to point a gun at him and that he was going to try to get "justifiable homicide" by claiming that he shot Cooper in self-defense. On December 11, 2007, a jury found Simpson guilty of voluntary manslaughter and criminal recklessness.

On appeal, Simpson raises three issues: (1) that the State failed to rebut his self-defense claim; (2) that the trial court erred in refusing to recall Gates as a witness after defense counsel discovered that he had written a letter to the trial court requesting a modification of his sentence in another case and expressing concern for his safety; and (3) that the trial court erred in refusing one of his final jury instructions regarding the presumption of innocence.

## **TODAY'S PANEL OF JUDGES**

### **Hon. John G. Baker (Monroe County) Chief Judge, Presiding**

- Judge of the Court of Appeals since June 1989

**John G. Baker** is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District, and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law—Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart, and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs, and since 2004 at the School of Law in Indianapolis. In addition, Judge

Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker, who was retained on the Court by election in 1992 and 2002, lives near Zionsville with his wife, Margaret (Peggy) Paul Baker. They have five children and, so far, six grandchildren.

## TODAY'S PANEL OF JUDGES

### Hon. Terry A. Crone (St. Joseph County)

- Judge of the Court of Appeals since March 2004

**Terry A. Crone** was appointed to the Court of Appeals March 8, 2004, representing the Third District. Judge Crone was raised in South Bend, and graduated from DePauw University, cum laude in 1974 and from the University of Notre Dame Law School in 1977.

Judge Crone practiced law in South Bend for nine years concentrating in areas of civil practice and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, Judge Crone was appointed Magistrate of the St. Joseph Circuit Court where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is a past President of the St. Joseph Bar Association, a former Member of the Board of Managers of the Indiana Judge's Association, a Member of the Supreme Court Committee on Character and Fitness and the Alternative

Dispute Resolution Committee of the Indiana Judicial Conference.

Judge Crone is currently a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations. Judge Crone currently serves as Chairman of the Indianapolis Bar Association Bar Leader Series. He helped found a program in South Bend to expose minority high school to the law and related fields; was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

Judge Crone is married and has three daughters.

### **"Appeals on Wheels"**

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

The Court of Appeals has held over 200 "on the road" cases since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

## TODAY'S PANEL OF JUDGES

### Hon. Cale J. Bradford (Marion County)

- Judge of the Court of Appeals since August 2007

**Cale J. Bradford** was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public

defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He and his wife, a full-day kindergarten teacher, have five children.

## **ATTORNEYS FOR THE PARTIES**



### **For Appellant, Jeremy D. Simpson:**

Donald W. Pagos  
709 Franklin Square  
Michigan City

Donald Pagos is a 1981 graduate of the Valparaiso University School of Law. Since graduation, Mr. Pagos has maintained a private practice in Michigan City, Indiana. He is currently a partner in the law firm of Sweeney, Dabagia, Thorne & Pagos. In addition to his private practice, Mr. Pagos is the Chief Deputy Public Defender of the LaPorte County Public

Defender's Office. In that capacity, Mr. Pagos handles every pauper appeal from criminal and CHINS cases arising out of any LaPorte County court. Mr. Pagos has had several arguments before the Court of Appeals, as well as the Indiana Supreme Court and the Seventh Circuit Court of Appeals.

### **For Appellee, State of Indiana:**

Joby D. Jerrells  
Attorney General's Office  
Indianapolis

Joby Jerrells was born and raised in Bloomington, Indiana, and holds a BA, MPA, and JD from Indiana University. As a Deputy Attorney General, Joby has argued numerous civil and criminal appeals before the Indiana Supreme Court, the Indiana Court of Appeals, and the Indiana Tax Court. Joby has over fifty published opinions and has managed cases from nearly three-

quarters of the counties in Indiana. Joby also served as a Deputy Prosecuting Attorney in Monroe County and was responsible for prosecuting felony drug crimes. Joby resides in Bloomington with his wife Dr. Lisa Jerrells, their two daughters, and one very spoiled Labrador Retriever puppy.